

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 ORVILLE MARSH dba SOUTH)
5 PARK AUTO WRECKERS,)
 Appellant,)
6 vs.)
7 PUGET SOUND AIR POLLUTION)
8 CONTROL AGENCY,)
 Respondent.)
9

PCHB No. 350

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THIS MATTER being an appeal of a \$100.00 civil penalty for an alleged
11 open-burning violation of respondent's Regulation I; having come on
12 regularly for hearing before the Pollution Control Hearings Board on
13 the 8th day of November, 1973, at Seattle, Washington; and appellant
14 Orville Marsh appearing through his attorney, Frank J. Conway and
15 respondent Puget Sound Air Pollution Control Agency appearing through
16 its attorney, Keith D. McGoffin; and Board member present at the
17 hearing being Walt Woodward; and the Board having reviewed the
18 transcript, examined exhibits, records and files herein and arguments

1 of counsel and having entered on the 4th day of January, 1974, its
2 proposed Findings of Fact, Conclusions of Law and Order; and the Board
3 having served said proposed Findings, Conclusions and Order upon all
4 parties herein by certified mail, return receipt requested and twenty
5 days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 4th day of
11 January, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 5th day of February, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward
17 WALT WOODWARD, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Mary Ellen McCaffree
21 MARY ELLEN McCAFFREE, Member
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ORVILLE)
MARSH d.b.a. SOUTH PARK)
AUTO WRECKERS,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 350

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$100.00 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a formal hearing in the Washington Commerce Building, Seattle, Washington, at 9:30 a.m., November 8, 1973.

Appellant appeared through Frank J. Conway, respondent through Keith D. McGoffin. Eugene D. Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 Counsel made closing arguments.

2 From testimony heard, exhibits examined, arguments considered
3 and transcript reviewed, the Pollution Control Hearings Board makes
4 these

5 FINDINGS OF FACT

6 I.

7 At 4:44 p.m., March 26, 1973, a pumper truck and two firefighters
8 of King County Fire District No. 11 arrived at the site of a burning car
9 body on the premises of appellant's South Park Auto Wreckers, 9420 - 14th
10 Avenue South, Seattle, King County. The truck had been dispatched
11 there two minutes earlier.

12 II.

13 An employee of appellant was using a fire extinguisher on the
14 blaze, but the fire was not under control when the fire department
15 truck arrived. The firemen, using a 1 1/2-inch hose attached to the
16 pumper, had the fire under control in less than 10 minutes.

17 III.

18 An inspector on respondent's staff, called by the fire department,
19 arrived at the wrecking yard at 5:10 p.m. He served Notice of Violation
20 No. 7663 on appellant, citing an alleged violation of Section 9.02
21 of respondent's Regulation I. Subsequently, and in connection therewith,
22 respondent served on appellant Notice of Civil Penalty No. 765 in the
23 sum of \$100.00. That penalty is the subject of this appeal.

24 IV.

25 Section 9.02(b)(4) of respondent's Regulation I makes it unlawful
26 to cause or allow an outdoor fire for the purpose of salvage or

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 reclamation of materials. Section 3.29 of respondent's Regulation I
2 provides that a civil penalty of not more than \$250.00 may be invoked
3 for any one violation of Regulation I.

4 V.

5 Appellant was absent from his wrecking yard from noon until
6 5:25 p.m. Two of his employees, John Collins and Arnold Field, the
7 office manager, were present during the fire. Appellant testified.
8 Neither Mr. Collins nor Mr. Field, who still is in appellant's employ,
9 were called to testify.

10 VI.

11 There is a year-around creek which flows through appellant's
12 property about 20 feet from the instant car body. A ladder is
13 installed to reach the creek quickly and buckets are kept close to the
14 creek to use in case of fire. Two five-gallon water-and-air fire
15 extinguishers and a small chemical fire extinguisher are kept in the
16 office, located about 100 feet from the instant car body.

17 VII.

18 One of the firefighters saw only one extinguisher being used on
19 the fire when the pumper truck arrived. He saw no other fire extinguishers
20 at the scene. He saw no buckets at the scene. The inspector saw no
21 extinguishers or buckets at or near the car body. Appellant saw three
22 extinguishers at or near the car after 5:25 p.m.

23 From these findings, the Pollution Control Hearings Board comes
24 to these

25
26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 From the testimony and evidence presented, the Board is puzzled
4 as to the cause of the fire and as to efforts made by appellant's
5 employees to extinguish it. The Board notes that one of those employees,
6 still in the employ of appellant, could have been called as a witness,
7 but was not. Appellant testified, but he was not present at the time
8 of the fire. The Board, therefore, must rely for its chief knowledge
9 of the incident on the testimony of the firefighter, the only person
10 who was there at the time of the fire who was called as a witness.

11 II.

12 There was an open outdoor fire at a car body on the premises of
13 appellant, as cited in Notice of Violation No. 7663. The fire
14 was "caused." It was there. It took a professional fire department
15 up to 10 minutes to extinguish it. Whether the fire was "allowed"
16 is questionable. One employee apparently used one extinguisher in
17 an unsuccessful effort to extinguish it. But "cause" is enough to
18 satisfy Section 9.02 of Regulation I which makes it unlawful to "cause
19 or allow" (emphasis provided) an open fire. Therefore, appellant was
20 in violation as cited by Notice of Violation No. 7663.

21 III.

22 As to the \$100.00 penalty, it is two-fifths of the maximum
23 allowable amount which could have been invoked. The Board, under
24 different circumstances, might be inclined to take an even more
25 lenient view than respondent already has evidenced. But the Board's
26 quality of mercy is tempered in this case by what appears to be an

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 effort by appellant to keep it from learning all the available facts.
2 The Board can only conclude that Notice of Civil Penalty No. 765 is
3 reasonable.

4 Therefore the Pollution Control Hearings Board issues this
5 ORDER

6 The appeal is denied and Notice of Civil Penalty No. 765 is
7 sustained in the full amount of \$100.00.

8 DONE at Lacey, Washington, this 4th day of January, 197⁴.
9 POLLUTION CONTROL HEARINGS BOARD

10
11 Walt Woodward
12 WALT WOODWARD, Chairman

13 W. A. Gissberg
14 W. A. GISSBERG, Member

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16 Mary Ellen McCaffree
17 MARY ELLEN McCAFFREE, Member
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